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Attorneys for Plaintiff, Far Eastern Shipping Co.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X		
FAR EASTERN SHIPPING CO.,	:	<u>ECF CASE</u>
	:	
Plaintiff,	:	07-CV-11375 (PAC)(GWW)
	:	
-against-	:	
	:	
PROGRESS BULK CARRIERS, LTD.,	:	
	:	
Defendant.	:	
-----X		

**AFFIRMATION OF SIMON HARTER, ESQ. IN OPPOSITION
TO DEFENDANT, PROGRESS BULK CARRIERS, LTD.'S,
MOTION TO VACATE THE RULE B MARITIME ATTACHMENT**

I, **SIMON HARTER**, do hereby affirm pursuant to 28 U.S.C. § 1746, as follows:

1. I am a Member of the Bar of this Honorable Court and am a member of the Law Offices of Simon Harter, Esq., counsel for Plaintiff, Far Eastern Shipping Co., herein.
2. I make this Affirmation from my personal knowledge and in opposition to Defendant, Progress Bulk Carriers, Ltd.'s, Motion to Vacate the Rule B Maritime Attachment.

MED BROKERAGE'S PRESENCE IN THIS DISTRICT

3. Defendant has submitted to this Court the Affirmation of Imbrahim Mazman, In Support of Defendant's Motion to Vacate Attachment, dated January 22, 2008. (hereinafter "*Mazman Aff.* at ____").

4. Mr. Mazman, who identifies himself as President of Med Brokerage, affirms, under oath, that Med Brokerage maintains offices at 29 Continental Place in Glen Cove, Long Island and at 29 Broadway in Manhattan. *Mazman Aff.* at ¶¶1-2.

5. Defendant relies on Mr. Mazman's Affirmation for the proposition that Med Brokerage is its agent for service of process at 29 Broadway, Manhattan, in this District. Interestingly, Mr. Mazman's Affirmation does not attest that any employees of Med Brokerage report to work at 29 Broadway, or, for that matter, that anyone employed by Med Brokerage is regularly available to accept service of process on behalf of Defendant at that location.

6. In support of his assertion that Med Brokerage maintains an office at 29 Broadway in this District, Mr. Mazman attaches, as Exhibit A to his Affirmation, what appears to be a current print-out from the New York State Division of Corporations for Med Brokerage.

7. The print-out submitted by Mr. Mazman identifies 29 Broadway, Suite 1602, as the address to which the New York Department of State will mail process if accepted on behalf of Med Brokerage, as the address of Mr Mazman, who is listed as "Chairman or Chief Executive Officer" of Med Brokerage, and as the "Principal Executive Office" for Med Brokerage. *Mazman Aff.* at Ex. A.

8. At the hearing held before the Court on January 25, 2008, I, as counsel for Plaintiff, questioned whether Defendant's alleged agent for service of process, Med Brokerage and Management, Corp. (hereinafter "Med Brokerage") still maintained offices at 29 Broadway. In response to this Court's inquiry, counsel for PBC said he could not indicate, one way or the other, whether Mr. Mazman's assertion of a current office was correct.

9. Immediately following the hearing, my associate, Gerald Weathers, and I proceeded directly to 29 Broadway. I noted that the directory in the building lobby contains a listing for Med Brokerage in Suite 1707. The designation of Suite 1707 is in contract to the New York Division of Corporations print-out for Med Brokerage which lists its office as being in Suite 1602. See Mazman Aff. at Ex. A.

10. After proceeding to the 17th floor, I noted that the entrance door to Suite 1707 bears two plaques, one for Med Brokerage and one for Ali C. Kurtmer, who is identified on his plaque as a Certified Public Accountant. No one answered my knock on the door to the suite and I noticed accumulated mail in the mail slot in the door.

11. Since I did not find anyone present at Suite 1707, I proceeded to enter the office of Jacques Pierot & Sons, Inc., who are known to me as ship brokers, and whose office is located in Suite 1700, the suite next door to Suite 1707, the suite allegedly occupied by Med Brokerage. Upon entering the offices of Jacques Pierot, I spoke with an individual who identified himself as "Daniel". Daniel stated that the only other

tenants on the 17th floor were the accountant (Mr. Kurtmer) and a law firm in the suite on the opposite side of Suite 1707.

12. I then proceeded to the offices of Cardillo & Corbett, the law firm to which Daniel had referred and whose offices are located in Suite 1710, on the opposite side of Suite 1707. I spoke to Tulio Prieto, Esq., who is a maritime lawyer at Cardillo & Corbett and is known to me. When I asked Mr. Prieto whether Med Brokerage still maintained an office in Suite 1707, he responded that to his knowledge, the only person occupying the suite was the accountant.

13. Mr. Weathers and I then proceeded to the offices of the building managers, Jeffries Morris, Inc., on the 19th floor. After making initial inquiries about finding out information on tenants, I was directed to a woman who identified herself as "Tia". When I asked her whether Med Brokerage was a tenant in the building, Tia consulted a typed list of names, suite numbers and telephone numbers, and after reviewing the list, stated to me that she found no listing for Med Brokerage as a current tenant. When I asked her specifically about Suite 1707, she stated that the suite was rented by Mr. Kurtmer and that it was possible that he had sublet the suite without the building's knowledge.

14. On departing the building, I asked a security guard in the lobby, who preferred not to give his name, whether anyone from Med Brokerage visited the building. He replied that Med Brokerage used to be in the building, but had left.

15. On January 28, 2008, undersigned counsel placed a call to Mr. Kurtmer, the accountant whose name is also listed on the door to Suite 1707. Mr. Kurtmer

indicated initially that his main office was on Long Island and that he only occupied Suite 1707 at 29 Broadway on Thursdays. In response to specific questions about Med Brokerage, Mr. Kurtmer became very evasive and stated, when asked directly, that Med Brokerage shared Suite 1707 with him. On further inquiry, he stated that Med Brokerage used the Suite as a "branch office" and that that was his "arrangement" with Med Brokerage. When asked if, by "branch office", he meant a mail drop, he responded that he did not know what a mail drop was. In response to a further question as to whether he actually saw Med Brokerage employees in the suite, he stated that he is only present in the suite on Thursdays and that he does not see anyone from Med Brokerage when he is there.

16. In an effort to obtain further information, I did a Google search today of "Med Brokerage". Although there were numerous listings for Med Brokerage, some at the Glen Cove address and others listing the 29 Broadway address, I found surprisingly little in the way of specific information regarding Med Brokerage or its activities.

17. One reference to Med Brokerage which I did come across was on the website of Manta Publishers at www.manta.com. Attached as Exhibit A to this Affirmation are print-outs of various pages from the Manta website. Mantra states that it provides data and analysis on corporations and other business entities which it compiles from sources such as Dunn & Bradstreet, Newstex, Snapdata, Datamonitor and ICON. *See Ex. A* at p. 3.

18. According to the listing on the Manta website for Med Brokerage, Med Brokerage is shown as having its office at the Glen Cove address on Long Island. Under the section in the Med Brokerage profile entitled, "Location Type", the designation, "Single location" is stated. The profile also states that Med Brokerage is estimated to have three employees and that the three employees are at the single location. See Ex. A at p. 4.

19. Plaintiff does not seek to gratuitously question Mr. Mazman's credibility. In light of the questions raised at the hearing regarding the 29 Broadway issue, this Court asked counsel for Defendant if he could indicate whether Med Brokerage was still present at the 29 Broadway office. Mr. Lyons said he could not, but that he would make inquiries. I have since sent emails to Mr. Lyons, on two separate occasions, asking him to state his client's position on this issue, but no response has been received to either inquiry as of the filing of this Affirmation.

DEFENDANT'S SUDDEN ARBITRATION DEMAND

20. Defendant claims that it is subject to specific jurisdiction in this District on the basis of Med Brokerage's commercial activities on its behalf. Specifically, Defendant argues that the charter party, on which Plaintiff's underlying claims are based, is a "New York" contract and thus triggers the application of specific jurisdiction since Plaintiff's claims arise out of the contract. Plaintiff responds to this argument in its Memorandum of Law, submitted herewith, by detailing the numerous aspects and provisions of the charter party which militate against such a designation.

21. In a rather curious development, on the very next business day following

this Court's hearing, Defendant issued an arbitration demand to Plaintiff in regard to what must now be a years-old claim for breach of charter. See, Marine Law Fax Transmission, dated January 28, 2008, attached as Exhibit B hereto. By contrast, Plaintiff's claim was submitted to the sole arbitrator in November, 2004.

22. Although the charter party clearly calls for arbitration in London under English law, and the demand is issued by Defendant's London solicitors, Defendant has elected to appoint as arbitrator Mr. Charles Measter who is a member of the Society of Maritime Arbitrators of New York, Inc. While Plaintiff does not question Mr. Measter's qualifications, and although we are aware of occasions in the past when New York arbitrators have been appointed in London arbitration, the timing of this action is interesting when one considers that the assessment of the various relative aspects of the charter party is presently before this Court for a determination of whether the charter party is a "New York" contract which would trigger the exercise of specific jurisdiction over Defendant.

23. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 29, 2008.

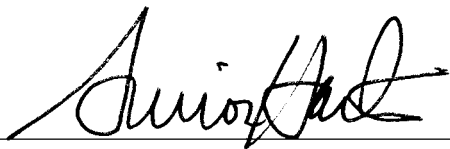
By: 
Simon Harter (SH-8540)

EXHIBIT “A”

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Company Profiles > Find Companies > Glen Cove, NY > Consumer Products & Services > Passenger Car Leasing > Arrangement of Transportation of Freight and Cargo > Brokers, shipping > Med Brokerage And Management Company Profile

Med Brokerage And Management

29 Continental Pl, Glen Cove, NY 11542-2935, United States (Map) (Add Company Info)

Phone: (516) 671-4454

SIC: Arrangement of Transportation of Freight and Cargo

Line of Business: Shipping Broker

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Detailed Med Brokerage And Management Company Profile

This company profile is for the private company Med Brokerage And Management, located in Glen Cove, NY. Med Brokerage And Management's line of business is shipping broker.

Company Profile: Med Brokerage And Management

Year Started: 1995

State of Incorporation: NY

URL: N/A

Location Type: Single Location

Stock Symbol: N/A

Stock Exchange: N/A

Also Does Business As: N/A

NAICS: N/A

SIC #Code:  View Details

Est. Annual Sales:  View Details

Est. Employees: 3

Est. Employees at Location: 3

Contact Name: Abraham Mazman

Contact Title: President

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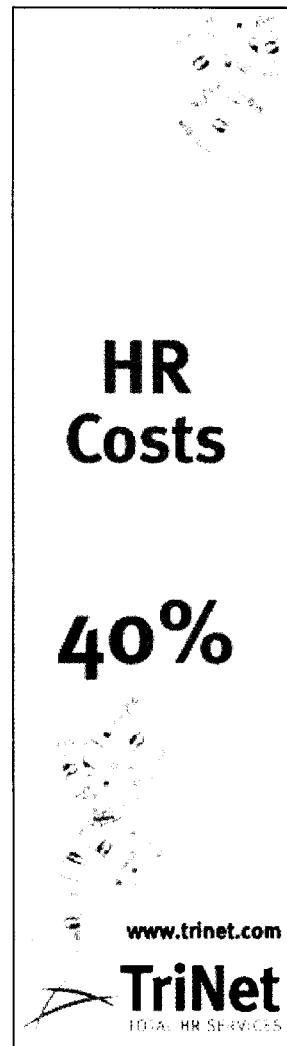
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EXHIBIT “B”

MARINE LAW

-----Solicitors-----

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FAX TRANSMISSION

To : FESCO, Legal Dept.
Attn : Viktor V Pomelov
Fax No : 00 742 32521450 – email: 90001@90.fesco.ru
Date : 28/1/08
Pages : 2 (including this page)
Re : "CHERKASSY" – FESCO – c/p 22.10.02
Oref : JDC/acr
CC : LG London
Atn : Imogen Rumbold
Fax No : 020 7173 8402

We are English lawyers instructed on behalf of Progress Bulk Carriers Ltd.

Under a charter party dated 22 October 2002, the mv "CHERKASSY" was let by her Owners, Far Eastern Shipping Co of Vladivostok, for a period time charter to Progress Bulk Carriers Ltd.

In accordance with Clause 48 of that charter party, all disputes arising out of the contract shall be referred to arbitration in London.

Charterers now have a claim against FESCO under the charter party for damages arising from Owners' breach of charter party and the vessel's inability to load ammonium nitrate. As a result of the inability to load ammonium nitrate, Charterers suffered losses which they claim as damages.

Our clients have now appointed Mr Charles L Measter as their arbitrator under Clause 48 in respect of their claims for damages. Mr Measter's contact details are as follows:

CHARLES L. MEASTER JD

Commercial Arbitrator and Mediator

2430 Bent Twig

Seabrook Island SC 29455

Phone 203 966 0833

Fax 203 966 1177

cmeaster@comcast.net

For the avoidance of doubt, our clients do not agree to a sole arbitrator and now call upon FESCO to appoint their arbitrator within 30 days, as required by Clause 48 of the governing charter party.

We are aware that FESCO have already commenced arbitration on a separate matter against our clients, and are represented in London by Lawrence Graham. As a matter of courtesy, we have therefore copied Lawrence Graham on this notice of appointment.

Best regards



Joe Crewdson

cherkassy fesco fesco+lg fx

CERTIFICATE OF SERVICE

I, Simon Harter, an attorney duly admitted to practice before this Honorable Court, hereby affirm that on this 29th day of January, 2008, I served a true copy of the foregoing upon all counsel of record by Electronic Means, using the ECF system for the United States District Court for the Southern District of New York in accordance with Section 5 of this Court's Procedures for Electronic Case Filing dated March 6, 2003.

By: 
Simon Harter (SH-8540)